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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Advanced Television Systems and)
Their Impact Upon the Existing)
Television Broadcast Service)
)

MM Docket No. 87-268

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To: The Commission

**Opposition to the Petitions for Reconsideration
in the Fifth Report and Order and Sixth Report and Order
of the Association of America's Public Television Stations
and the Public Broadcasting Service**

The Association of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") (collectively "APTS/PBS") hereby submit their Opposition to the Petitions for Reconsideration of the Commission's *Fifth Report and Order* and *Sixth Report and Order* in the above-captioned proceeding ("*Fifth Report*" and "*Sixth Report*" respectively, and jointly "*Reports*") to oppose Petitions that request that the Commission (a) revise the DTV Table of Allotments by reducing the interference protection afforded NTSC stations, (b) afford increased protection to low power television stations, and (c) preclude DTV licensees from offering supplemental and ancillary services over their DTV facilities.

The grounds for APTS/PBS's Opposition are as follows: (a) the Commission lacks sufficient information at this time to reduce the interference protection to NTSC stations; (b) increasing protection to LPTV stations is contrary to the Commission's consistent regulation of low power stations as a secondary service and would adversely affect the ability of full power stations to transition to DTV;

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and (c) precluding supplemental and ancillary services on DTV facilities is wholly inconsistent with the Telecommunications Act of 1996 and should be summarily rejected.¹

I. The Commission Should Defer Consideration of the Proposed Modification to the Current Interference Standard Pending the Collection of Sufficient Field Test Data to Evaluate The Impact

Several of the parties seeking consideration of the Commission's *Reports* urge it to change the criteria for determining whether a DTV station will cause interference to an NTSC station in order to reduce the disparity in power between VHF NTSC stations assigned UHF DTV channels ("V-to-U stations") and UHF NTSC stations assigned UHF DTV channels ("U-to-U stations"). These petitioners argue that the power differences, which are as much as 20 to 1, will relegate U-to-U stations to second class status in the DTV world. In order to cure this problem, they urge the Commission to use F(50,50) curves instead of F(50,10) curves to determine whether a DTV channel would cause interference at the Grade B contour of an existing NTSC station. These petitioners maintain that the use of F(50,50) curves

¹ APTS/PBS have actively participated in all phases of this proceeding to represent the interests of the nation's public television stations. They have filed Comments in numerous prior rounds and recently filed a Petition for Reconsideration and Clarification of the *Reports* in order to enhance the ability of the nation's public television stations to participate in the exciting new opportunities offered by digital television. Petition for Reconsideration and Clarification of Association of America's Public Television Stations and Public Broadcasting Service, filed June 13, 1997 ("APTS/PBS Petition"). APTS/PBS have also joined in selected Comments filed by the Broadcast Caucus and joined in its Petition for Reconsideration, noting, however, that they supported the Commission's decision to establish a minimum and maximum power level for UHF DTV licensees and urged that exceptions be made only in limited cases to correct the most severe replication problems. See Petition for Clarification and Partial Reconsideration of the Fifth and Sixth Reports and Orders Submitted by the Association for Maximum Service Television, Inc., the Broadcasters Caucus and other Broadcasters, filed June 13, 1997, p. 2 n.3.

will permit U-to-U stations to operate with increased power, and thus serve a greater audience than is possible under the existing DTV Table.²

As indicated in their earlier Comments, APTS/PBS are sensitive to the comparative position of UHF stations during the transition to DTV. Over 60% of the nation's public television stations operate on UHF channels, and many operate with less than full NTSC authorized facilities. Thus, APTS/PBS share petitioners' concerns regarding the power disparities suffered by U-to-U stations in the Table adopted in the *Sixth Report*, and strongly endorse affording UHF stations the opportunity to maximize their DTV service areas.

At the same time, however, it is essential that the Commission assure that current public television audiences continue to receive their NTSC service during the transition, particularly during the early years when the vast majority of viewers will remain dependent on the analog channels. Diminished NTSC service would not only be a detriment to the viewing public, but would particularly impact public television stations which are heavily dependent on contributions from their viewers to support their NTSC, and develop their DTV, service. Since the Commission has had very limited experience with DTV operation and no experience with the effect of using F(50,50) curves to determine interference between NTSC and DTV stations, APTS/PBS believe that the Commission does not have sufficient information, at this time, to determine the extent to which reception may be adversely affected if it uses F(50,50) curves. In the absence of that information, APTS/PBS urge the Commission to defer consideration of the proposed modifications to the interference standard used to develop the current DTV Table.

² See, e.g., Petition for Reconsideration of Association of Local Television Stations, Inc.; Petition for Reconsideration of Paxson Communications Corporation, et al.; Petition for Reconsideration of Sinclair Broadcasting Group, Inc.

APTS/PBS believe, however, that the Commission's proposed review during the DTV transition affords it an excellent opportunity to gather data concerning the effect of a less stringent interference standard on NTSC stations. Actual operation of DTV stations during the transition, appropriately structured tests, or both will enable the Commission to determine whether use of F(50,50) curves, or some other standard, would materially affect NTSC reception. Accordingly, APTS/PBS urge the Commission to consider, as part of the review process, possible adjustments to the interference standard based on actual experience with DTV to NTSC interference. In the meantime, APTS/PBS urge the Commission to afford UHF stations, within the confines of the existing Table, every opportunity to maximize their service areas.

In sum, while the goal of those seeking to relax the interference criteria is laudable, the effect of the proposal on NTSC stations is too uncertain to support any immediate change in the DTV standard at this time. The Commission should, however, revisit this issue during the transition once it has had actual real world experience with the impact of DTV operation on NTSC reception.

II. The Commission Should Reaffirm the Secondary Status of Low Power Television Stations

The Community Broadcasters Association ("CBA") and Skinner Broadcasting Inc. ("Skinner") argue that the Commission failed to consider adequately under Section 307(b) the impact of its DTV Table on LPTV stations. They urge the Commission to factor into the allotment calculus the impact of DTV allotments on LPTV stations. The Broadcast Caucus addresses these proposals at length in its Comments on and Opposition to Petition for Reconsideration,³ and APTS/PBS fully support its position. The Commission created the LPTV service as a secondary

³ See Comments on and Opposition to Petitions for Reconsideration of the Fifth and Sixth Reports and Orders Submitted By The Association of Maximum Service Television, Inc. and the Broadcast Caucus.

service, and the courts have affirmed its decision to continue treating LPTV stations as secondary during the transition to a DTV environment and thereafter.⁴ Granting CBA's and Skinner's suggestions would materially alter that consistent regulatory approach.

More importantly, petitioners' approach could adversely affect the ability of full power stations to successfully transition to DTV. As the Commission is aware, it is difficult enough to accommodate full power stations within a tightly packed core spectrum. Adding LPTVs to the mix could adversely affect the channel assignments of full power DTV stations, increase interference, or force more stations onto DTV channels outside the core.⁵

Although APTS/PBS oppose the suggestions of CBA and Skinner, APTS/PBS do believe that the Commission should take some added steps to facilitate the ability of public television translators in rural and other underserved areas to continue operating. As APTS/PBS argued in their Petition for Reconsideration, public television translators provide an important and sometimes vital service to their communities. Accordingly, rather than adopting the proposals of CBA and Skinner, the Commission should, as APTS/PBS stressed in their Petition for Reconsideration, give priority in finding replacement channel assignments to public television translator stations that are displaced by DTV stations.⁶ Those translators

⁴ See *Polar Broadcasting, Inc. v FCC*, 3 F.3d 1184 (D.C. Cir. 1994).

⁵ To the extent such accommodation of LPTV stations affected public television licensees, APTS/PBS demonstrated in their Petition for Reconsideration, these reallocations would aggravate the already substantial financial obstacles public television licensees face in transitioning to DTV. See APTS/PBS Petition at 7-15.

⁶ See APTS/PBS Petition at 23-26.

are vital to realizing the Congressional goal of making public television service universally available to the American public.⁷

III. The Commission Should Reject Suggestions That It Preclude Television Stations From Using DTV Spectrum For Ancillary or Supplementary Purposes

The Personal Communications Industry Association ("PCIA") argues that the Commission should prohibit DTV licensees from providing ancillary or supplementary service, specifically land mobile, notwithstanding the clear statutory language authorizing such use.⁸ PCIA maintains that the broad-sweeping authorization for such service is wholly inconsistent with the statutory requirement that ancillary and supplementary services should be permitted "as may be consistent with the public interest, convenience and necessity." As such, PCIA's transparent motives and argument should be summarily rejected.

Section 336(a)(2) of the Act specifically provides that the Commission "shall adopt regulations that allow the holders of [DTV] licenses to offer such ancillary or supplementary services . . . as may be consistent with the public interest, convenience and necessity" (emphasis added). This language clearly establishes a Congressional policy favoring the use of DTV for the very activities PCIA seeks to preclude. Further, in the *Fifth Report*, the Commission carefully considered the rights and obligations imposed on DTV licensees by this provision and held that (a) DTV licensees would be required to broadcast one free, over-the-air broadcast service comparable in quality to current television service,⁹ and (b) those licensees would be

⁷ Because of the importance of continuing the service provided by these public television translator stations, APTS/PBS support permitting public television translator licensees to apply early for replacement channels on a protected basis when it is obvious that they will not be able to continue operating once a DTV station commences operation. APTS/PBS also support proposals to allow translators operating on Channels 60 to 69 to apply on a protected basis for replacement channels now.

⁸ 47 U.S.C. § 336(a)(2).

⁹ *Fifth Report* at ¶¶ 27-28.

given the "flexibility to respond to the demands of their audience by providing ancillary and supplementary services that do not derogate the mandated free, over-the-air program service."¹⁰ The Commission found that:

the approach we take here will serve the public interest by fostering the growth of innovative services to the public and by permitting the full possibilities of the DTV system to be realized. . . . By permitting broadcasters to assemble packages of services that consumers desire, we will promote the swift acceptance of DTV and the penetration of DTV receivers and converters. . . .[D]igital television promises a wealth of possibilities in terms of the kinds of and numbers of enhanced services that could be provided to the public. Indeed, we believe that giving broadcasters flexibility to offer whatever ancillary and supplementary services they choose may help them attract consumers to the service, which in turn, will hasten the transition. In addition, the flexibility we authorize should encourage entrepreneurship and innovation.¹¹

Those findings fully support the Commission's determination that allowing broadcasters to provide ancillary or supplementary services is consistent with the public interest, convenience and necessity.

Further, as APTS/PBS noted in their Petition for Reconsideration, these uses are of particular importance to public television licensees since they could provide potentially new and needed sources of revenue. For some stations, the revenues generated will permit them to acquire the facilities they need to construct DTV stations. Additionally, the revenues will facilitate these stations' ability to afford the costs of operating two television stations during the transition.¹² PCIA's position should be summarily rejected.

Conclusion

For the reasons set forth above, the Commission (a) should defer consideration of the proposals to modify the interference standards used to generate

¹⁰ *Id.* at ¶29.

¹¹ *Id.* at ¶33.

¹² APTS/PBS Petition at pp. 26-28.

the DTV Table until additional data is available to evaluate the impact on existing NTSC stations, (b) should reject the proposals to provide additional protection for LPTV stations, and (c) should reject the proposal to preclude DTV licensees from providing ancillary or supplementary services.

Respectfully submitted,

A handwritten signature in cursive script, reading "Theodore D. Frank". The signature is written in dark ink and is positioned above the printed name and address.

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Date: July 18, 1997